

## INTRADEPARTMENTAL CORRESPONDENCE

February 25, 2021

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**TO:** The Honorable Board of Police Commissioners

**FROM:** Chief of Police

**SUBJECT:** CHIEF OF POLICE DIRECTED, FID NO. 018-20

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Honorable Members:

The following is my review, analysis, and findings for Chief of Police (COP) Directed, Force Investigation Division (FID) No. 018-20. A Use of Force Review Board (UOFRB) was convened on this matter on February 8, 2021. I have adopted the recommendations from the UOFRB for this incident. I hereby submit my findings in accordance with Police Commission policy.

### SUMMARY<sup>1</sup>

On May 2, 2020, Officer I. Tamayo, Serial No. 38258, Newton Area Vice, Officer M. Mascareno, Serial No. 32570, Newton Patrol Division, and Sergeant J. Vega, Serial No. 36750, Hollenbeck Patrol Division, while off-duty, drove to the Stoddard Wells Off-Highway Vehicle (OHV) area northeast of the City of Victorville, California in the San Bernardino County desert with the intent to camp out for the night and engage in target practice with their various firearms.<sup>2</sup>

**Note:** The Stoddard Wells OHV area is managed by the Bureau of Land Management (BLM). According to the BLM website, the Stoddard Wells OHV area does not restrict people from camping, enjoying recreational off-highway vehicles, or shooting weapons.<sup>3</sup>

According to Officer Tamayo, he met Officer Mascareno and Sergeant Vega at Newton Division and over the years has developed a friendship outside of work that is inclusive of their respective spouses and children.

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<sup>1</sup> The summary and the investigation completed by FID for this incident have been provided to the Board of Police Commissioners.

<sup>2</sup> According to the FID investigation, during the weeks prior the incident, Officers Tamayo, and Mascareno and Sergeant Vega discussed a plan to drive to the area to camp and engage in target practice with their respective guns.

<sup>3</sup> According to the FID investigation, both Officer Tamayo and Sergeant Vega checked the BLM website to verify the boundaries and restriction of the BLM land.

According to Officer Mascareno he had been friends with Officer Tamayo and Sergeant Vega for approximately 12 years and 16 years, respectively.

According to the FID investigation, at approximately 1530 hours, Officer Tamayo drove to Sergeant Vega's residence and picked him up. The two proceeded to place Sergeant Vega's camping gear into Officer Tamayo's pickup truck and the two drove together to the Stoddard Wells OHV area in the San Bernardino County desert. When they arrived in the area, they found it very busy with other campers and off-highway vehicles. At approximately 1840 hours, after driving around the area looking for a suitable place to camp and safely discharge their weapons they settled on a location. This location had minimal campers, provided a large mountain as the backdrop for their shooting, and was not crisscrossed with trails that any unsuspecting off-highway vehicles could access. Prior to establishing camp, Officer Tamayo contacted an unidentified individual at the trailer immediately south of and closest to the area he wanted to set up camp. Officer Tamayo verified the individual was not planning on shooting any weapons towards the mountain. Officer Tamayo then advised the individual he was planning on setting up camp north of him and that he would be firing weapons in a northerly direction towards the mountain. After establishing that this would not be a concern for the individual, Officer Tamayo and Sergeant Vega drove approximately one quarter mile up the hill on a dirt trail to a suitable position and established a camp.<sup>4</sup>

According to Officer Mascareno, he drove himself to the Stoddard Wells OHV area in the San Bernardino County desert in his personal pickup truck and communicated with Officer Tamayo and Sergeant Vega through a two-way radio and by cellular telephone text messages. Officer Mascareno was guided to the location of the camp and arrived *just after 1800 hours maybe 1830 hours*.

**Note:** According to the FID investigation, Officer Mascareno arrived at the camp at approximately 1900 hours.

According to the FID investigation, Officer Tamayo parked his pickup truck facing south while Officer Mascareno parked perpendicular to the front bumper of Officer Tamayo's pickup truck facing west. This created an L-shaped barrier to block the wind. The remainder of the camp was set-up in the interior of the protected area created by Officers Tamayo and Mascareno's pickup trucks. Sleeping arrangements were established with Officer Tamayo setting up a cot along the driver's side of his pickup truck. Officer Mascareno set up a similar cot along the passenger side of his (Mascareno's) pickup truck, while Sergeant Vega set up a small tent in between the two cots with the opening facing to the east. A makeshift fire pit, created with a collection of rocks was situated northeast of Sergeant Vega's tent. A table with a grill was set up just east of the tent.

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<sup>4</sup> According to the FID investigation, unbeknownst to Officer Tamayo when he selected his site to camp he had wandered onto privately owned land adjacent to the BLM area. FID investigators noted there were no signs or fences to alert or prohibit anyone from trespassing on this property. Furthermore, the area had OHV trails, as did the BLM land in the surrounding area.

According to Officer Mascareno, prior to leaving for the camping trip he had checked the BLM website and ensured they could both camp and shoot their weapons at the location. When Officer Mascareno arrived at the camp, it was still daylight and he wanted to conduct target practice with his service pistol. Officer Mascareno then secured his *nylon BDU Sam Brown* to his waist, which contained his service pistol and began shooting in a northerly direction into a rock face *hillside*. Shortly thereafter, Officers Tamayo and Mascareno and Sergeant Vega set up metal targets for both their rifles and handguns. Officer Tamayo and Sergeant Vega joined Officer Mascareno in the target practice; however, they only fired a small number of rounds each.

According to the FID investigation, at approximately 1930 hours, Officers Tamayo began cooking hamburgers on a grill and it was at this time that Officer Tamayo had his first beer. With dinner served at approximately 2030 hours, Officers Tamayo and Mascareno, and Sergeant Vega, sat down around the campfire, ate, and drank beer while they talked and listened to music.

According to Officer Mascareno at approximately midnight, they *fired up the grill again* and prepared an additional meal. After consuming the meal, Sergeant Vega began setting up his tent as Officer Mascareno secured his belongings for the evening.

**Note:** According to the FID investigation, Officers Tamayo and Mascareno, along with Sergeant Vega recalled how much alcohol they individually consumed throughout the night. Officer Tamayo believed he consumed four to six beers. Officer Mascareno believed he consumed four to five beers. Sergeant Vega believed he consumed approximately four beers. After dinner, Officers Tamayo and Mascareno and Sergeant Vega consumed whiskey around the campfire and according to Officer Tamayo, he had approximately six ounces of whiskey in two three-ounce servings.

According to the FID investigation, on May 3, 2020, at approximately 0100 hours, Officer Tamayo who was near the campfire announced he was going to urinate.

According to Officer Tamayo, he stood up and walked approximately 30 to 40 feet beyond his pickup truck to a bush and urinated on the ground.

According to Officer Mascareno, when Officer Tamayo *stood up* to go urinate he *staggered*. Officer Mascareno stated, "He took like a good one or two steps. His gait, you know, it was--it was a little off. But then again, every time we were getting up there was a lot of rocks and stuff. So, but I, you know, I was like, okay, he's feeling pretty good I think at that point. Yeah, so he stumbled up and he walked away." Officer Mascareno was unsure if Officer Tamayo's difficulty in walking was caused by the consumption of alcohol or the terrain.

According to Officer Mascareno, he believed Officer Tamayo walked to the west beyond his (Officer Tamayo's) truck to urinate. Officer Mascareno from his seat at the fire, looked to the west in the direction Officer Tamayo had walked and saw him facing west and believed he was urinating near a bush. Officer Mascareno then returned his attention to the fire. After a short period of time, Officer Mascareno again looked west and saw the silhouette of Officer Tamayo

*hunched over* now facing south standing adjacent to the passenger side of Officer Tamayo's truck. Officer Tamayo appeared odd standing in that position and Officer Mascareno could not see any light from the interior truck light or the glow of a cellular telephone that Officer Tamayo could have been using and was unsure of what Officer Tamayo was doing. Officer Mascareno then confronted Officer Tamayo and stated, "Hey dude. Why are you being so creepy? Come back over here, you know. Just come back and hang out with me," but Officer Tamayo did not respond. Officer Mascareno disregarded Officer Tamayo, stood up, and walked towards his (Officer Mascareno's) cot. As Officer Mascareno walked from the campfire towards his cot, he closed the distance between himself and Officer Tamayo and he observed that Officer Tamayo was still on the passenger side of Officer Tamayo's truck, but was now standing adjacent to the right rear tire facing east, towards the campfire. Officer Tamayo was holding a Glock semi-automatic pistol in a *double hand pose* with his arms extended over the bed of the truck, pointing the pistol between Officer Mascareno and Sergeant Vega (**Debriefing Point No. 1 – Off Duty Tactics**).

According to Sergeant Vega, he was standing on the south side of his tent, between his tent and Officer Mascareno's truck and heard Officer Mascareno state, "Dude, what the fuck are you doing with the gun?" It was not until this point that Sergeant Vega stated that he noticed that Officer Tamayo "had his gun pointed. The way it looked to me is like he had it pointed at Mark." Sergeant Vega became *frightened* and *really scared* because he had never witnessed Officer Tamayo violate any of the Firearm Basic Safety Rules before.

According to Officer Mascareno, Officer Tamayo stated, "Hey get back guys, get back, just stay back." Officer Mascareno replied, "Hey, what—what are you doing? Like you know, put your gun away! Put your gun away!" In response Officer Tamayo lowered his pistol and returned to his previous position near the passenger side door of Officer Tamayo's pickup truck and was facing south. Officer Mascareno paid no further attention to Officer Tamayo and returned to the campfire. A short time later, Officer Mascareno recalled that he needed to retrieve something from his pickup truck and began to walk towards his pickup truck. While in the process of approaching his pickup truck, he looked to his west and observed that Officer Tamayo was again standing near the right rear of Officer Tamayo's pickup truck facing east. Officer Mascareno illuminated Officer Tamayo with a flashlight and observed that Officer Tamayo was again holding his Glock semiautomatic pistol in both hands with his arms extended over the truck bed. This time Officer Mascareno observed that Officer Tamayo was pointing his pistol directly at Officer Mascareno. Before Officer Mascareno could verbally respond, Officer Tamayo discharged three rounds from his pistol at him; however, Officer Mascareno only observed two distinct muzzle flashes. One round discharged by Officer Tamayo struck Officer Mascareno in his left shoulder near the clavicle and exited the rear of his shoulder. After being shot, Officer Mascareno applied direct pressure to his wound in an attempt to stop the bleeding. Sergeant Vega then began closing the distance on Officer Tamayo and told Officer Tamayo, "Hey, give me your gun. Give me your gun right now." In response Officer Tamayo replied, "Fuck you, fuck you" (**Debriefing Point No. 2 – Basic Firearm Safety Rules**).

According to Sergeant Vega, he observed two muzzle flashes, heard two gun shots, and observed Officer Mascareno *go down*. Sergeant Vega stepped forward to confront Officer Tamayo and stated, "Hey Ish, what the fuck are you doing? Hey drop the fucking gun." As Sergeant Vega approached the front of Officer Tamayo's pickup truck, Officer Tamayo pointed his pistol at Sergeant Vega. Sergeant Vega then again stated, "Drop the fucking gun!" Officer Tamayo replied in a threatening and uncharacteristic voice, "Fuck you." When Sergeant Vega observed the muzzle of Officer Tamayo's pistol pointed in his direction he moved right away and sought cover. Sergeant Vega then lost sight of Officer Tamayo in the darkness.

According to Officer Tamayo, during the entirety of the trip he had his Glock 22 pistol holstered on his hip. After dinner, Officer Tamayo stood up from his chair, which had been situated around the campfire, and walked away to urinate. Officer Tamayo walked to a bush 30 to 40 feet west of his pickup truck, facing south, and urinated. Officer Tamayo heard a voice which "mumbled" out in front of him approximately *90 feet* away from a southern direction. Officer Tamayo could not observe anyone since it was dark and could not understand or recognize the voice, but knew that the voice he had heard was not Sergeant Vega or Officer Mascareno's. Officer Tamayo looked to his left where Officer Mascareno and Sergeant Vega had been standing next to the fire pit and did not observe them. Officer Tamayo thought it was odd that they were no longer there. Officer Tamayo perceived the voice as a *threatening gesture* and attempted to *squint* to see it, but was unable to see anyone. Officer Tamayo looked forward again in a southern direction, then heard a gunshot coming from that direction. Officer Tamayo believed that the individual was utilizing a *suppressor* since Officer Tamayo was unable to observe the muzzle flash of the gun. Officer Tamayo believed the voice was trying to *draw him* away so he would not see that Officer Mascareno and Sergeant Vega had been shot. Officer Tamayo immediately got down onto his knee and drew his pistol from the holster on his right hip (**Drawing and Exhibiting**).

According to Officer Tamayo, after perceiving the voice and hearing a gunshot fired in his direction, he got down onto his knee, and discharged three rounds in a southerly direction. Officer Tamayo reverted to his *military training* and got up then conducted a "lateral bound" to his right to obtain cover. Officer Tamayo yelled out for Officer Mascareno and Sergeant Vega and looked in their last known direction. Officer Tamayo believed they were all getting *ambushed*. Officer Tamayo believed the voice was someone who was trying to distract him during the ambush and believed that person already killed Officer Mascareno and Sergeant Vega. Officer Tamayo decided to keep moving and walked up the nearby mountain for higher ground until he could come up with a plan (**Lethal Force**).

According to Officer Tamayo, after the OIS he wanted to provide assistance to Sergeant Vega and Officer Mascareno, but believed there could be multiple suspects in the camp and if he approached the camp, he would be overwhelmed by these unknown suspects. Officer Tamayo then moved up hill in a northwesterly direction to gain distance from the unidentified threat.

According to Officer Mascareno, after being struck by gunfire and hearing Officer Tamayo's statements, he felt *fear* and he wanted to turn around and run. After falling to the ground Officer Mascareno believed he dropped the keys to his pickup truck on the ground. Officer Mascareno

then wanted to get distance between himself and Officer Tamayo and sought cover behind the left rear quarter panel of his pickup truck. Officer Mascareno then yelled out to Officer Tamayo, "Hey, put the gun down. You know you shot me. You know I'm hurt, I'm bleeding." Officer Tamayo replied, "Mark, Javier. Mark, Javier just fall back guys, just fall back, fall back." Officer Mascareno retrieved a BB-gun with an attached light from the interior of his pickup truck. Using the attached light, Officer Mascareno scanned the camp and the desert beyond Officer Tamayo's truck. Officer Mascareno spotted Officer Tamayo approximately 20 to 30 yards north of the camp in a kneeling position still holding his pistol in his hands. According to Officer Mascareno, Officer Tamayo was not pointing his pistol at anything specific.

According to the FID investigation, after the OIS Officer Mascareno turned to run away and flee, but collided into and fell over a small table near the rear of Officer Mascareno's pickup truck. After falling to the ground, he got up and stated to Officer Tamayo, "Hey, you fucking shot me bro, I love you. Why the fuck you shoot me?" Sergeant Vega in fear retreated and joined Officer Mascareno towards the rear of Officer Mascareno's pickup truck. In his movements, Sergeant Vega turned off a lantern sitting on a second table that was holding the grill. Neither Sergeant Vega nor Officer Mascareno could observe Officer Tamayo and did not know his exact location.

According to Officer Mascareno, he could hear that Sergeant Vega was behind him and the two began to converse with each other. Sergeant Vega inquired about Officer Mascareno's injuries and they discussed utilizing Officer Mascareno's pickup truck to flee the location and seek help. Officer Mascareno asked Sergeant Vega to help him find the ignition keys, but Sergeant Vega expressed his fear of being shot by Officer Tamayo. While discussing what to do, Officer Mascareno removed his hand from his wound and realized the extent of his injury. Officer Mascareno started "freak out" and came to the realization that fleeing in his pickup truck was not an option. Officer Mascareno lost sight of Officer Tamayo and *started getting light headed and a little dizzy*. In fear he was going to be confronted by Officer Tamayo again, Officer Mascareno removed his Colt .38 Special pistol from a holster inside of his right front shorts pocket. However, due to the blood on his hands Officer Mascareno was unable to securely hold the pistol and returned it to the holster in his pocket. Sergeant Vega and Officer Mascareno then left the camp on foot in separate directions and sought help from nearby campers. Officer Mascareno did not have contact with Sergeant Vega again until after units from the San Bernardino County Sheriff's Department were at scene. Officer Mascareno, he was able to make contact with a nearby camper who agreed to call 911 for him. Officer Mascareno remained with that camper until on-duty sheriff personnel arrived at scene.

According to Sergeant Vega, at approximately 0106 hours, while *hunkered down* seeking cover in the desert he text messaged Officer Tamayo's wife, Nicole, and stated, "Call Ish now. Tell him to relax." Nicole responded, "Why? What happened?" Sergeant Vega then proceeded to call Nicole and explained to her that she needed to call Officer Tamayo in an attempt to calm him down and drop his weapon because Officer Tamayo had shot Officer Mascareno. After ending his phone call, Sergeant Vega heard an unidentified cellular telephone ring and went unanswered north of his location. Sergeant Vega then fled south down the mountain to seek help and unexpectedly encountered Officer Tamayo on a dirt road standing *still* like a "freaking

statue." Upon encountering each other Officer Tamayo stated, "Put your hands up! Identify yourself! Put your fucking hands up and identify yourself! Who are you?" Sergeant Vega replied to Officer Tamayo, "Hey man. It's me. It's Vega, dude. Hey." Officer Tamayo responded with, "I don't know who the fuck you are." Officer Tamayo was speaking in a voice that was uncharacteristic of him causing Sergeant Vega to fear for his safety. Sergeant Vega then replied to Officer Tamayo, "Hey, hey, hey, hey it's me," and began backing away from Officer Tamayo. Sergeant Vega then ran from Officer Tamayo "zigzagging" as he made his way through the desert.

According to the FID investigation, at approximately 0119:39 hours, Deputy J. Van Brimmer, Serial No. G3868, San Bernardino County Sheriff's Department, Victor Valley Patrol, was dispatched to the location of the shooting. At approximately 0141:02 hours, Deputy Van Brimmer arrived at scene and was met by Officer Mascareno.

According to Officer Mascareno, he identified himself was a police officer and advised that he was armed with a pistol in his right front pocket. Deputy Van Brimmer retrieved the pistol and secured it before interviewing Officer Mascareno.

According to the FID investigation, at approximately 0147:34 hours, Sergeant C. Phillips, San Bernardino County Sheriff's Department, Hesperia Patrol, arrived at scene. Sergeant Phillips was immediately followed by Deputy M. Whitney, Serial No. H5860, San Bernardino County Sheriff's Department, Victor Valley Patrol. Deputy Whitney retrieved a medical kit from his patrol vehicle and applied first aid to the gunshot wound to Officer Mascareno's shoulder. At this time Sergeant Vega walked out of the darkness with his hands raised over his head. Sergeant Vega verbally announced his presence as he walked toward the deputies.

According to Deputy Van Brimmer, Sergeant Vega announced he was armed and complied as Deputy Van Brimmer retrieved a Ruger .380 semiautomatic pistol from Sergeant Vega's pocket and secured it in his police vehicle.

According to the FID investigation, at approximately 0159:48 hours, an air unit piloted by Deputy E. Leon, Serial No. D3385, and his observer Deputy J. Hernandez, Serial No. C9245, San Bernardino County Sheriff's Department, Emergency Operations Division, Aviation Unit, arrived on scene. Deputies Leon and Hernandez located the campsite and began a systematic search of the campsite and surrounding area for Officer Tamayo with negative results. At approximately 0213:23 hours, Deputy Leon utilized his air unit's public address (PA) system to identify himself and requested Officer Tamayo to present himself. At 0228:43 hours, Deputies Leon and Hernandez observed a light approximately one quarter mile south of the campsite and flew in that direction. At approximately 0230:03 hours, Deputies Leon and Hernandez located Officer Tamayo lying in a supine position. Officer Tamayo was moving his legs and arms, but was unresponsive to Deputy Hernandez's requests over the public address (PA) system for Officer Tamayo to identify himself. At approximately 0236:23 hours, the air unit broadcast that Officer Tamayo acknowledged their request and signaled in the affirmative that he was Officer Tamayo. An arrest team consisting of San Bernardino County Sheriff Department deputies was then established. At approximately 0245:52 hours, the arrest team was directed by the air unit



toward Officer Tamayo's location. At approximately 0258:03 hours, sheriff's deputies approached Tamayo and handcuffed him without incident (**Debriefing Point No. 3 – Intradepartmental Cooperation**).

According to Deputy Hernandez, they orbited the area of the campsite in search of Officer Tamayo for approximately 30 minutes when the helicopter became low on fuel. Deputies Leon and Hernandez then flew to the Apple Valley airport to refuel. According to Deputy Hernandez, it took approximately 10 minutes to refuel and then return to the area to continue their search for Officer Tamayo. Deputy Hernandez then located Officer Tamayo lying on his back, on the ground approximately 500 yards south east of Officer Tamayo's campsite. Deputy Hernandez made several announcements over the helicopter's PA system and requested Officer Tamayo to raise an arm to show Deputy Hernandez that Officer Tamayo could hear the announcements. Officer Tamayo did not comply with the commands given by Deputy Hernandez and continued to lie on the ground, bending his legs. Approximately 20 minutes later, Officer Tamayo stood up. Once Officer Tamayo stood up, Deputy Hernandez utilized the Forward Looking Infrared (FLIR) camera and observed a pistol in one of Officer Tamayo's hands. Deputy Hernandez then illuminated Officer Tamayo with the spotlight equipped on the helicopter. Deputy Leon then made several PA announcements for Officer Tamayo to drop the pistol and walk away from it with his hands up. After approximately 15 minutes, Officer Tamayo complied with the PA announcements. Deputy Hernandez stated that Officer Tamayo "staggered near a dirt road and subsequently dropped the handgun near a dirt berm." Officer Tamayo then walked away from the pistol toward a dirt intersection and lied on the ground.

According to Deputy Leon, while orbiting above Officer Tamayo, Deputy Leon observed a *handgun* in a holster on Officer Tamayo's waist and "was given commands to drop the firearm to the ground." Initially Officer Tamayo refused to disarm himself and continued to reposition himself from a standing position to a sitting position. After approximately ten minutes, Officer Tamayo complied with the commands he was given and "placed the firearm on the ground." Deputy Leon then gave Officer Tamayo verbal directions to Officer Tamayo "to get up and walk to an area where it was safe for the deputies to take him into custody." Officer Tamayo "had a hard time walking and appeared to be under the influence of alcohol." Once Officer Tamayo reached a safe area, Deputy Leon ordered Officer Tamayo to lie face down on the ground with his hands out to his sides. Several times while lying on the ground, Officer Tamayo tucked his hands under his chest and looked over his right shoulder in the direction of the approaching deputies. Deputy Leon feared for the safety of the deputies and gave Officer Tamayo additional commands to place his hands out to his sides. After Officer Tamayo complied with Deputy Leon's commands the arrest team approached Officer Tamayo and took him into custody without incident.

According to Deputy K. Schuler, Serial No. G6870, San Bernardino County Sheriff's Department, Victor Valley, while executing a tactical plan to take Officer Tamayo into custody, the air unit gave Officer Tamayo verbal commands to walk towards a roadway where the deputies were deployed. Officer Tamayo initially refused to comply with the commands he was given. After several commands, deputies gained Officer Tamayo's compliance and Officer Tamayo was taken into custody.



According to Deputy Van Brimmer, when Officer Tamayo was being taken into custody Officer Tamayo stated, "What's going on? I was being shot at."

According to Officer Tamayo, the last thing he recalled was moving up the mountain in a northwesterly direction away from the camp. He suddenly woke up, laying on his back, with his gun in his hand and recognized a police helicopter was circling overhead. He immediately felt relieved as he thought help was there to assist him and Officer Mascareno and Sergeant Vega.

According to the FID investigation, Officer Mascareno was treated by a responding San Bernardino County Fire Department rescue ambulance and transported to Apple Valley Airport. Officer Mascareno was then airlifted to the Arrowhead Regional Medical Center and treated for a single gunshot wound to his left shoulder (**Additional/Equipment – Rendering Aid/Medical Treatment**).

According to Sergeant Vega, at approximately 0224 hours, he contacted Lieutenant J. Barkley, Serial No. 32428, Hollenbeck Patrol Division, Watch Commander, by cellular telephone and briefed him on what occurred. Initially Lieutenant Barkley only made notifications to his chain of command because he believed the incident was administrative in nature and a criminal investigation was being conducted by the San Bernardino County Sheriff's Department.

According to the FID investigation, FID was contacted and investigators responded to the location of the incident and an assessment was completed. At approximately 0420 hours, once it was determined that a Categorical Use of Force had occurred the Department Operations Center (DOC) was notified of the incident. The FID investigation determined that this delay in notification to the DOC was not a deviation in Department Policy.

## **FINDINGS**

**Tactics** – Administrative Disapproval, Officer Tamayo.

**Drawing/Exhibiting** – Out of Policy, Administrative Disapproval, Officer Tamayo.

**Lethal Use of Force** – Out of Policy, Administrative Disapproval, Officer Tamayo.

## **ANALYSIS**<sup>5</sup>

Officer Tamayo drove, with Sergeant Vega, to attend a preplanned trip. Officer Tamayo set up a campsite where he and Sergeant Vega met with Officer Mascareno. After discharging their weapons during target practice, Officer Tamayo consumed alcohol.

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<sup>5</sup> The analysis reflects my recommendations as supported by the preponderance of the evidence established by the investigation.

During the evening, Officer Tamayo heard what he perceived to be a threatening voice followed by a gunshot. Officer Tamayo did not hear what the voice had stated and could not see the source of the voice.

Officer Tamayo drew his firearm from his holster which was on his hip. At this point, Officer Tamayo had walked over to his pickup truck's passenger side, near the bed of the truck, and pointed his firearm in the direction of Sergeant Vega and Officer Mascareno. Officer Mascareno attempted to deescalate the situation and communicated with Officer Tamayo, asking him to put his firearm down. Officer Tamayo momentarily pointed his gun away from Officer Mascareno and Sergeant Vega. However, when Officer Mascareno walked to his (Officer Mascareno) truck to retrieve an item, Officer Tamayo again pointed his firearm at Officer Mascareno.

Officer Tamayo got down onto one knee as he pointed his firearm at Officer Mascareno. Officer Tamayo fired directly at Officer Mascareno as Officer Mascareno continued his attempts at de-escalation. Officer Tamayo fired three rounds at Officer Mascareno, striking Officer Mascareno in his shoulder. The actions of Officer Tamayo in his response to the voice and of discharging his pistol at Officer Mascareno were not appropriate and not within Department policies and procedures.

### TACTICS

Department policy relative to a Tactical Debrief is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance."*

Department policy relative to Administrative Disapproval is: *"A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training"* (Los Angeles Police Department Manual, Volume 3, Section 792.05).

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

### Tactical De-Escalation

*Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

*Tactical De-Escalation Techniques*

- Planning
- Assessment
- Time
- Redeployment and/or Containment
- Other Resources
- Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

**Planning** – Approximately two weeks prior to the incident, Officer Tamayo planned a trip to meet with Officer Mascareno and Sergeant Vega, where they would set up metal targets and practice firing their weapons. Additionally, the officers would camp at the location for a night. Officer Tamayo planned to cook dinner for Officer Mascareno and Sergeant Vega later in the evening. Officer Tamayo maintained a firearm holstered on his hip throughout his time at the campground as he cooked and later sat around their campfire.

The UOFRB noted the purpose of the trip was to discharge their weapons as made evident by Officer Tamayo ensuring he was camping in an area where no one else would be interrupted or placed in danger from discharging their firearms. The UOFRB was critical of Officer Tamayo's decision to maintain his firearm holstered on his hip while knowing he was going to be consuming alcoholic beverages. Later in the evening, Officer Tamayo also began drinking liquor. The UOFRB noted Officer Tamayo had numerous opportunities throughout the evening to secure his firearm in his vehicle prior to consuming alcoholic beverages.

**Assessment** – Officer Tamayo stated that he walked west, approximately 30 to 40 feet beyond his truck, and urinated. Officer Tamayo heard a threatening voice approximately 90 feet south of him. Officer Tamayo could not determine what the voice was saying to him, but felt threatened. Officer Tamayo believed that because of this, he was being ambushed and Officer Mascareno and Sergeant Vega had been killed. Officer Tamayo drew his firearm from its holster on his hip and aimed in the direction of the voice. Officer Tamayo could not observe the source of the voice; however, Officer Tamayo discharged three rounds in the direction of the voice.

The UOFRB noted Officer Tamayo stated during his interview with FID investigators, that he was unable to determine what the voice was saying to him to make him feel threatened. Officer Tamayo had no clear, distinguishable target, and could not articulate what the threat was at the time. The UOFRB noted Officer Tamayo's failure to assess the nature of what he perceived to be a threat, as well as his failure to assess his target which led to Officer Tamayo striking Officer Mascareno in the shoulder when Officer Tamayo discharged his pistol. In doing so, Officer Tamayo's failure to assess led to violations of basic firearm safety rules and, in turn, Officer Mascareno being fired upon.

**Time** – There was no indication that Officer Tamayo utilized time to decrease the intensity of this incident. Based on the preponderance of the evidence, I have determined that Officer Tamayo had a significant opportunity to use more time to determine his course of actions. Officer Tamayo was not under any threat of injury or harm and his actions escalated the incident.

**Redeployment and/or Containment** – There are no indications Officer Tamayo utilized redeployment or containment during this incident. Based on the preponderance of the evidence, I have determined that the incident did not warrant Officer Tamayo to redeploy or contain the location as no threat to him existed.

**Other Resources** – There are no indications that Officer Tamayo utilized other resources during this incident. Based on a preponderance of the evidence, I have determined that the incident did not warrant the use of additional resources as Officer Tamayo was not under any threat of harm.

**Lines of Communication** – Officer Tamayo stated that he heard what he perceived to be a threatening voice and stated he heard a gunshot, which came from the direction of the voice. Officer Tamayo did not relay any information to Officer Mascareno or Sergeant Vega, or warn them of the occurrence.

The circumstances of this incident were unique as it involved Officer Tamayo stating that he was responding to a perceived threat, while a preponderance of the evidence indicates that no threat existed. The UOFRB discussed the Officer Tamayo's recollection of the incident and how it was in direct conflict with that of Officer Mascareno and Sergeant Vega. Officer Mascareno and Sergeant Vega reported that they did not hear a voice and did not hear a gunshot. The UOFRB discussed that while Officer Tamayo's recollection of the event was invalidated by Officer Mascareno and Sergeant Vega's statements, Officer Tamayo's actions, were he to have encountered a threat as one that he perceived, would have still violated department policy. The UOFRB determined that had Officer Tamayo utilized planning, assessment, time, redeployment, other resources, and better lines of communication would have allowed Officer Tamayo to avoid this circumstance altogether.

During the review of the incident, the following Debriefing Topics were noted:

**Debriefing Point No. 1**

**Off Duty Tactics**

(Substantial Deviation, without justification – Officer Tamayo)

*A police officer is the most conspicuous representative of government, and to the majority of the people, the officer is a symbol of stability and authority upon whom they can rely. An officer's conduct is closely scrutinized, and when the officer's actions are found to be excessive, unwarranted, or unjustified, they are criticized far more severely than comparable conduct of persons in other walks of life. Since the conduct of officers, on- or off-duty, may reflect directly upon the Department, officers must at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City (Los Angeles Police Department Manual, Volume No. 1, Section 230.35, Responsibility of Off-Duty Officers).*

In this circumstance, Officer Tamayo had consumed numerous beers and liquor despite having knowledge that there were numerous firearms nearby, as well as the pistol he had holstered on his hip. Officer Tamayo had opportunity to secure his pistol prior to consuming any alcoholic beverage. Approximately nine hours after the OIS occurred, a blood sample was collected and Officer Tamayo was determined to have a Blood Alcohol Concentration (BAC) of 0.085%.<sup>6</sup>

The UOFRB discussed Officer Tamayo's decision to remain with a holstered firearm while consuming beer and liquor. The UOFRB noted Officer Mascareno and Sergeant Vega's statements about Officer Tamayo appearing to be intoxicated. Officer Tamayo had numerous opportunities where he could have secured his firearm prior to consuming alcohol. Officer Tamayo had stated he stopped participating in target practice while Officer Mascareno had continued into the night. The UOFRB emphasized that officers should abstain from consuming alcohol while maintaining control of firearms and in this case, it was done so with a disregard to safety.

In addition, the UOFRB determined that Officer Tamayo's actions were in stark contrast with the Department's expectation of an officer. Officer Tamayo placed Officer Mascareno and Sergeant Vega's lives at risk by pointing his loaded firearm at both of them while he was intoxicated and ultimately firing at and striking Officer Mascareno who presented no threat and was unarmed.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that Officer Tamayo's actions were a substantial deviation, without justification, from approved Department tactical training. In order to enhance future performance, I will direct that this be a topic of discussion during the Tactical Debrief.

**Debriefing Point No. 2      Basic Firearm Safety Rules**

(Substantial Deviation, without justification – Officer Tamayo)

*Firearms safety is critical. Officers must have the ability to draw, holster and manipulate weapons safely at all times, especially under stressful conditions. Firearms safety rules have been established based upon real life situations and are applicable at all times. Violations of any of the safety rules will not be tolerated.*

*The Four Basic Firearm Safety Rules*

- 1. All guns are always loaded.*
- 2. Never allow the muzzle to cover anything you are not willing to shoot.*
- 3. Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
- 4. Be sure of your target (Los Angeles Police Department Firearms Manual, July 2015).*

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<sup>6</sup> Officer Tamayo's blood sample was taken under the authority of a search warrant.

Officer Tamayo stated he heard a voice approximately ninety feet away as he urinated into a bush near his campsite. Officer Tamayo described his inability to see the source of the voice. Officer Tamayo believed the voice was threatening to him and had already killed Officer Mascareno and Sergeant Vega. In spite of Officer Tamayo's inability to see his target, which was the voice, Officer Tamayo stated that he drew his pistol and pointed at what he perceived to be the threat. Officer Tamayo pointed his pistol directly at Officer Mascareno and fired three times, striking Officer Mascareno.

Shortly after, Sergeant Vega attempted to de-escalate the situation and get Officer Tamayo to put his pistol away. However, Officer Tamayo then pointed his pistol at Sergeant Vega for unknown reasons.

The UOFRB discussed Officer Tamayo's disregard for safety and of the firearm safety rules. Officer Tamayo was aware his firearm was loaded and had been firing it earlier in the evening as part of his target practice. The UOFRB noted Officer Tamayo violated Basic Firearm Safety Rule number two. The UOFRB noted Officer Tamayo had pointed his gun at Officer Mascareno and Sergeant Vega who posed no threat to him and were attempting to de-escalate Officer Tamayo's behavior. Additionally, the UOFRB discussed Officer Tamayo's inability to determine what the voice was saying and could not articulate what the threat was and did not explain how it could be perceived as a deadly threat. Officer Tamayo could not see anyone and only heard the voice which he perceived as a threat and therefore could not acquire his sights on this threat, in violation of Basic Firearm Safety Rule number three. The UOFRB also noted that Officer Tamayo was not sure of his target and violated Basic Firearm Safety Rule number four.

The UOFRB was critical of Officer Tamayo's disregard for firearm safety causing Sergeant Vega and Officer Mascareno to be placed in serious and deadly danger with Officer Mascareno ultimately being shot.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that Officer Tamayo's actions were a substantial deviation, without justification, from approved Department tactical training. In order to enhance future performance, I will direct that this be a topic of discussion during the Tactical Debrief.

### **Debriefing Point No. 3    Intradepartmental Cooperation**

(Substantial Deviation, without justification – Officer Tamayo)

#### *If Involved in an Off-Duty Incident:*

- *Identify yourself in a loud, clear voice to responding uniformed personnel*
- *Keep your hands away from any weapon(s) and don't make sudden moves that may appear threatening (i.e., reaching for wallet or badge)*
- *Follow all commands given to you by uniformed personnel (this is not the time to let ego get in the way)*
- *Relay any suspect(s) information and direction of travel as soon as possible (Off-Duty Actions, Training Bulletin, August 2017)*

Officer Tamayo was found by the San Bernardino Sheriff's Department air unit and was lying on his back with his pistol in his hand. Officer Tamayo was ordered to identify himself and to comply with orders from the airship through the PA system. However, the FID investigation determined that for approximately 15 minutes, Officer Tamayo did not comply with the sheriff deputy's orders.

The UOFRB discussed the extensive delay in Officer Tamayo complying with commands from San Bernardino County Sheriff's Deputies. Officer Tamayo stated that he awoke while on top of the mountain, to the sight of the airship. Officer Tamayo stated he could not understand the commands given to him by the deputies in the air ship. The UOFRB noted the deputies gave Officer Tamayo several commands and requested he confirm his identity. Officer Tamayo confirmed his identity after numerous requests, but continued to hold his pistol and change it from one hand to another, causing deputies to believe Officer Tamayo was unsafe to approach. After many more commands to put his pistol down and away from himself, Officer Tamayo complied approximately 15 minutes later. The UOFRB was critical of Officer Tamayo's actions as he did not display the Department's standard for cooperation with other law enforcement agencies. His delay in complying with the deputies' orders escalated the danger of the incident.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that Officer Tamayo's actions were a substantial deviation, without justification, from approved Department tactical training. In order to enhance future performance, I will direct that this be a topic of discussion during the Tactical Debrief.

## **COMMAND AND CONTROL**

*Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained enough situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

*Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of*



*line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).*

*Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Los Angeles Police Department, Supervisor's Field Operations Guide, Volume 2, Emergency Operations Guide).*

Sergeant Vega, while sitting around the campfire, observed Officer Tamayo point his firearm at Officer Mascareno. Sergeant Vega became frightened and believed it was uncharacteristic of Officer Tamayo to violate the firearm safety rules. Sergeant Vega observed Officer Tamayo fire two rounds at Officer Mascareno. Sergeant Vega stood up and ordered Officer Tamayo to drop his firearm. Sergeant Vega ran to the front of Officer Tamayo's truck and observed Officer Tamayo pointing his firearm at Sergeant Vega. Sergeant Vega was in disbelief over Officer Tamayo's actions. Sergeant Vega heard a crash and discovered Officer Mascareno had fallen onto a table. Officer Mascareno asked Sergeant Vega to retrieve his truck keys so they could drive away. Sergeant Vega could not find the keys and realized he could no longer see Officer Tamayo. Worried that Officer Tamayo would approach, Sergeant Vega turned off a light on the grill. Sergeant Vega ordered Officer Mascareno to go find help while Sergeant Vega tried to distract Officer Tamayo. Sergeant Vega became worried Officer Tamayo would shoot them both if Sergeant Vega and Officer Mascareno walked together. Sergeant Vega began attempts to communicate with Officer Tamayo. Sergeant Vega believed Officer Tamayo would drop his firearm when ordered to do so. However, Officer Tamayo did not respond to Sergeant Vega.

When Sergeant Vega no longer heard movement, he crouched down and texted Officer Tamayo's wife, Nicole Tamayo, and informed her of the shooting. Sergeant Vega heard Officer Tamayo's phone ringing to his north. Sergeant Vega ran south and approached what he believed was a bush, however it was actually Officer Tamayo. Sergeant Vega heard Officer Tamayo request, in a voice he did not recognize, for Sergeant Vega to identify himself. Sergeant Vega tried to communicate with Officer Tamayo, but Officer Tamayo stated he did not know Sergeant Vega. Sergeant Vega became frightened and ran away. Sergeant Vega stated he was unsure, but believed that he had heard two gunshots as he ran away. Sergeant Vega carried a firearm with him, but stated he did not want to engage Officer Tamayo in the dark; however, Sergeant Vega was frightened and believed Officer Tamayo was going to hunt him and find him. Sergeant Vega continued to run and heard Officer Mascareno knocking on a nearby trailer. Sergeant Vega tried to make his way down to Officer Mascareno, but continued to stop to listen for Officer Tamayo's footsteps and moved slowly to be able to collect his thoughts. As Sergeant Vega arrived and made contact with Officer Mascareno he observed deputies arriving at their location.

While at scene with the San Bernardino County Sheriff's Deputies, Sergeant Vega notified the deputies that he had to make notifications to his lieutenant. Sergeant Vega called Lieutenant J. Barkley, Serial No. 32428, Hollenbeck Patrol Division, Watch Commander, to notify him of the incident. Sergeant Vega also notified Captain S. Monico, Serial No. 30364, Hollenbeck Patrol

Division, Commanding Officer, via text message, of the incident. This occurred shortly before Officer Tamayo was taken into custody.

The actions of Sergeant Vega were consistent with Department supervisory training and my expectations of field supervisors during a critical incident.

### **Tactical Debrief**

In conducting an objective assessment of this case, the UOFRB determined, and I concur, that Officer Tamayo's actions were a substantial deviation, without justification, from approved Department tactical training, thus requiring a finding of Administrative Disapproval.

Each tactical incident also merits a comprehensive debriefing. In this case, there were areas identified where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, I will direct that Officer Tamayo attend a Tactical Debrief and that the specific identified topics be discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control;
- Lethal Force.

### **General Training Update (GTU)**

As of this report, Officer Tamayo has not attended the General Training Update (GTU).<sup>7</sup>

### **Drawing/Exhibiting**

Department policy relative to drawing and exhibiting a firearm is: *"An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified"* (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).

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<sup>7</sup> On May 3, 2020, Officer Tamayo was assigned home and unable to attend a GTU.

### Officer Tamayo

According to Officer Tamayo, during the entirety of the trip he had his Glock 22 pistol holstered on his hip. After dinner, Officer Tamayo stood up from his chair, which had been situated around the campfire, and walked away to urinate. Officer Tamayo walked to a bush and urinated. Officer Tamayo heard a voice which "mumbled" out in front of him approximately "90 feet" away from a southern direction. Officer Tamayo could not observe anyone since it was dark and could not understand or recognize the voice, but knew that the voice he had heard was not Sergeant Vega or Officer Mascareno's. Officer Tamayo looked to his left where Officer Mascareno and Sergeant Vega had been standing next to the fire pit and did not observe them. Officer Tamayo thought it was odd that they were no longer there. Officer Tamayo perceived the voice as a "threatening gesture" and attempted to "squint" to see it, but was unable to see anyone. Officer Tamayo looked forward again in a southern direction and then heard a gunshot coming from that direction. Officer Tamayo believed the individual was utilizing a "suppressor" since he was unable to observe the muzzle flash of the gun. Officer Tamayo believed the voice was trying to *draw him* away so he would not observe that Officer Mascareno and Sergeant Vega had been shot. Officer Tamayo immediately got down onto his knee and drew his pistol.

Officer Tamayo recalled,

*And I took a Glock 10-mill, that's my hunting sidearm, and I had a Glock 22, 40-cal.<sup>8</sup>  
I had the Glock 22... In a holster on my hip.<sup>9</sup>*

*I get up from my chair to go urinate to kind of to the right of my truck. There was like a little bush on the side, so I go over there and urinate. And then I'm finishing up and then out in front of me in the darkness I hear a voice. Something was said or mumbled. I couldn't understand. It was a voice I didn't recognize... So I kind of like look in that direction, but I can't see because it's pitch dark. And then I look to my left where Mark and Javier were standing next to the firepit. I didn't see them. I was like, man, that's kind of odd. And then I kind of look forward and then I hear a gunshot from that direction where that voice came from.<sup>10</sup>*

*I perceived like it was a threatening gesture or something was said... Because in the middle of the night who approaches someone like that... I was even like trying to squint kind of like to see I could make out. I couldn't see anything.<sup>11</sup>*

*It's hard to say, but I'm going to approximate maybe 90 feet.<sup>12</sup>*

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<sup>8</sup> Officer Tamayo Page 17, Lines 11-13.

<sup>9</sup> Officer Tamayo, Page 33, Line 8 and 10.

<sup>10</sup> Officer Tamayo, Page 21, Lines 11-17 and Lines 19-25.

<sup>11</sup> Officer Tamayo, Page 38, Lines 15-16 and Lines 18-19 and Page 39, Lines 6-8.

<sup>12</sup> Officer Tamayo, Page 39, Lines 12-13.

*So I look kind of back south toward that voice and I hear a gunshot coming from that direction where that voice came from... It was a single shot... And now this guy was trying to draw me in away from them so I wouldn't see that they were down... I figured -- I didn't hear the -- I didn't see the muzzle flash, so either he had a flash suppressor or something, but that's what I was -- everything went so quick in my head.<sup>13</sup>*

*So I immediately get down on a knee. I unholster.<sup>14</sup>*

The UOFRB conducted a thorough evaluation of the reasonableness of Officer Tamayo's Drawing/Exhibiting of his pistol. The UOFRB noted Officer Tamayo drew his pistol on one occasion during this incident. The UOFRB discussed Officer Tamayo's account of the incident and noted it was in direct opposition to that of Officer Mascareno and Sergeant Vega's recollection. Officer Mascareno and Sergeant Vega did not hear the voice that Officer Tamayo perceived as a threat and neither heard a gunshot, which Officer Tamayo stated he heard coming from the direction of the voice. Additionally, Officer Tamayo could not articulate what the voice said to cause Officer Tamayo to reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified. Officer Tamayo drew his pistol and pointed it at Sergeant Vega and Officer Mascareno even as they posed no threat to Officer Tamayo. Officer Mascareno was able to de-escalate the situation momentarily and asked Officer Tamayo to put his pistol away to which Officer Tamayo lowered his pistol. Moments later, Officer Tamayo brought his pistol back up and pointed it directly at Officer Mascareno. The UOFRB determined it was clear neither Officer Mascareno nor Sergeant Vega posed a threat to Officer Tamayo.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officer Tamayo would not reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, I find Officer Tamayo's Drawing/Exhibiting to be Out of Policy, Administrative Disapproval.

### **Policy on the Use of Force**

#### **Use of De-Escalation Techniques<sup>15</sup>**

*It is the policy of this Department that, whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any*

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<sup>13</sup> Officer Tamayo, Page 41, Lines 17-19 and 23-24 and Page 42, Lines 14-16 and 18-21.

<sup>14</sup> Officer Tamayo, Page 22, Lines 2-3.

<sup>15</sup> Office of the Chief of Police (OCOP), Special Order No. 4, "Policy on the Use of Force - Revised," was adopted by the Department on February 5, 2020 and amended LAPD Manual, Volume 1, Section 556.10.

*encounter with a suspect and enable an officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation.*

### **Factors Used to Determine Objective Reasonableness<sup>16</sup>**

*The Department examines reasonableness using Graham v. Connor and the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience, in the same situation, based on the totality of the circumstances.*

*In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The feasibility of using de-escalation tactics;*
- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances.*

### **Use of Force – Deadly<sup>17</sup>**

*It is the policy of this Department that deadly force shall be used only when necessary in defense of human life. Specifically, deadly force shall be used only to:*

- *To defend against an imminent threat of death or serious bodily injury to the officer or to another person; or*

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<sup>16</sup> Office of the Chief of Police (OCOP), Special Order No. 4, "Policy on the Use of Force - Revised," was adopted by the Department on February 5, 2020 and amended LAPD Manual, Volume 1, Section 556.10.

<sup>17</sup> Office of the Chief of Police (OCOP), Special Order No. 4, "Policy on the Use of Force - Revised," was adopted by the Department on February 5, 2020 and amended LAPD Manual, Volume 1, Section 556.10.

- *To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.*

*In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible.*

*Note: Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.*

#### **The Department's Evaluation of Deadly Force<sup>18</sup>**

*The Department will analyze an officer's use of deadly force by evaluating the totality of the circumstances of each case consistent with the California Penal Code Section 835(a), as well as the factors articulated in Graham v. Connor.*

#### **Officer Tamayo – .40 caliber, Glock 22 pistol, three rounds in a southerly direction.**

**Note:** Officer Tamayo stated that he believed that he discharged a total of three rounds, which was consistent with the post-OIS magazine count of Officer Tamayo's pistol. Officer Mascareno believed he heard three rounds being fired at him by Officer Tamayo. Sergeant Vega observed and heard two gunshots and two expended cartridge casings were recovered. Based on the investigation, FID investigators determined that a total of three rounds were discharged by Officer Tamayo.

According to Officer Tamayo, after perceiving the voice and hearing a gunshot fired in his direction, he got down onto his knee, and discharged three rounds in a southerly direction. Officer Tamayo reverted to his "military training" and got up then conducted a "lateral bound" to his right to obtain cover. Officer Tamayo yelled out for Officer Mascareno and Sergeant Vega and looked in their last known direction. Officer Tamayo believed they were all getting "ambushed." Officer Tamayo believed the voice was someone who was trying to distract him during the ambush and believed that person already killed Officer Mascareno and Sergeant Vega. Officer Tamayo decided to keep moving and walked up the nearby mountain for higher ground until he could come up with a plan.

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<sup>18</sup> Office of the Chief of Police (OCOP), Special Order No. 4, "Policy on the Use of Force - Revised," was adopted by the Department on February 5, 2020 and amended LAPD Manual, Volume 1, Section 556.10.

Officer Tamayo recalled,

*I fire three shots in that direction of that voice.<sup>19</sup>*

*So from where I was standing, I just took a knee and I returned -- I fired about three shots in the direction of that voice and that shot.<sup>20</sup>*

*And then from there I get up. I kind of -- I kind of revert to my military training, so I kind of do a lateral bound kind of to my right, find another position and get behind those -- there was hardly any cover, but kind of find some low ground... I say, "Mark, Vega," like really like loud. And I'm looking in the direction where they're at. I didn't see them. I was like -- I was kind of in shock. I'm like what happened? I go we're getting ambushed. The guy to the front of me was trying to distract me while they probably took out my friends already, because I didn't hear them or see them... I just decided to kind of keep moving up the mountain away while I come up with a plan.<sup>21</sup>*

*So I figured there was a bunch of -- or a couple guys that took them out and this guy was trying to draw me in. So I figured my best move is probably to go up to the high ground.<sup>22</sup>*

**Background** - Officer Tamayo did not discuss his background during his interview regarding the OIS, but did state he considered his background when deciding on a place to camp. Officer Tamayo stated he chose a location with a background which would not allow rounds to go through and hit anyone in the area. Therefore, Officer Tamayo chose a campsite that had a mountain in its background. The FID investigation determined that the campsite area was only accessible by dirt roads and there were no permanent structures, businesses, or residence in the vicinity of the camping site. There were two campsites in the immediate vicinity of Officer Tamayo's campsite. The closest site was approximately one third of a mile directly south and the second site was approximately one half of a mile southeast from Tamayo's campsite.

Officer Tamayo stated that he discharged his pistol at an unspecific target which he perceived to be threat. Officer Tamayo stated he could not see from where the voice had come and could not see the source. Therefore, since Officer Tamayo did not observe his perceived threat, he was unable to observe the background of the perceived threat. The UOFRB determined Officer Tamayo's failure to assess the perceived threat and his inability to see his target made it evident that he therefore did not assess his background during the OIS. I have also noted that based on the preponderance of the evidence, Officer Tamayo in fact discharged his pistol at Officer Mascareno. While I took into consideration the selection of location of the campsite, it is evident that Officer Tamayo did not consider his background when he discharged his pistol at Officer Mascareno.

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<sup>19</sup> Officer Tamayo, Page 22, Lines 3-4.

<sup>20</sup> Officer Tamayo, Page 43, Lines 6-9.

<sup>21</sup> Officer Tamayo, Page 22, Lines 6-11, 12-19 and 22-24.

<sup>22</sup> Officer Tamayo, Page 45, Lines 8-11.



In this case, the UOFRB conducted a thorough review of the incident. During their review, the UOFRB took into consideration the circumstances of this incident. However, the UOFRB noted that based on a preponderance of the evidence, it was evident Officer Tamayo's perceptions did not align with evidence provided by FID detectives and was in opposition to that of Officer Mascareno and Sergeant Vega's statements. The UOFRB noted Officer Tamayo's rationale for firing at an unknown target for an unknown threat, placing Officer Mascareno and Sergeant Vega's lives in danger was unreasonable as Officer Mascareno and Sergeant Vega posed no threat to Officer Tamayo.

Additionally, the UOFRB noted Officer Tamayo discharged three rounds at Officer Mascareno. From his statements, Officer Tamayo indicated that he had the presence of mind to perceive a single shot fired from the direction of the voice. However, Officer Tamayo aimlessly discharged three rounds without assessing between any of his rounds. Officer Tamayo also stated he discharged all three rounds in the direction of the threat which he could not see. Officer Tamayo discharged all three rounds in the direction of Officer Mascareno, striking Officer Mascareno once in the shoulder.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officer Tamayo, would not believe the circumstances presented an imminent threat of death or serious bodily injury nor that the use of deadly force would be objectively reasonable or necessary.

Therefore, I find Officer Tamayo's Use of Lethal Force to be Out of Policy, Administrative Disapproval.

### **Additional/Equipment**

**Rendering Aid/Medical Treatment** - Officer Mascareno was struck by a bullet in his left shoulder which entered the front of his shoulder, near his clavicle, and exited his rear shoulder. Officer Mascareno was treated by a responding San Bernardino County Fire Department Rescue Ambulance and transported to Apple Valley Airport where he was airlifted to Arrowhead Regional Medical Center. Officer Mascareno was treated for a single gunshot wound to his left shoulder. Officer Mascareno was released on May 4, 2020.

### **Audio/Video Recordings**

**Digital In-Car Video System (DICVS)** – San Bernardino County Sheriff Department Deputy vehicles were not equipped with DICVS.

**Body Worn Video (BWV)** – San Bernardino County Sheriff Department Deputies were not equipped with BWV devices and did not obtain video recordings.

**Social Media** – None.

**Outside Video** – None.

Respectfully,


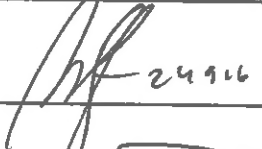


  
MICHEL R. MOORE  
Chief of Police

Date: 2/25/21

LOS ANGELES POLICE DEPARTMENT  
USE OF FORCE REVIEW BOARD REPORT

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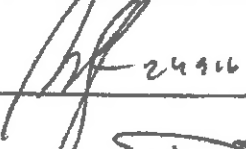

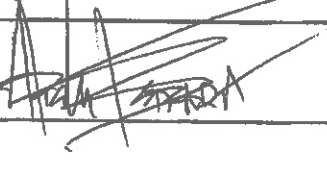
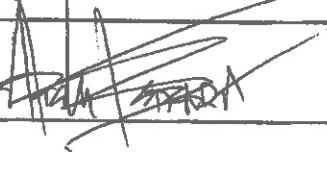
REVIEW BOARD INFORMATION

<b>Location of Incident</b> Stoddard Wells Off-Highway Vehicle Area-Apple Vall	<b>RD</b>	<b>Date of Incident</b> May 03, 2020	<b>Date and Time of Board Review</b> February 08, 2021 1230 Hours
<b>Chair</b> Assistant Chief D. Choi, Serial No. 32350	<b>Signature of Approving Board Members:</b> 		
<b>Member (Office Representative)</b> Assistant Chief B. Girmala, Serial No. 24916			
<b>Member (Police Sciences and Training Bureau)</b> Commander M. Reina, Serial No. 34490			
<b>Member (Bureau)</b> Deputy Chief A. Labrada, Serial No. 30398			
<b>Member (Peer)</b> Officer A. Estrada, Serial No. 30398			
<b>Presenting Commanding Officer</b> Captain A. Baez, Serial No. 26623			
<b>Notes:</b>			
<b>Additional Considerations:</b>			
<b>Modification to Present Policy, Practices or Training:</b>			
<div style="text-align: right;">  </div> <div style="text-align: right; margin-top: 20px;"> <input checked="" type="checkbox"/> COP Date Signed: <u>2/25/21</u>  <input checked="" type="checkbox"/> PC Date Submitted: <u>2/25/21</u> </div>			

LOS ANGELES POLICE DEPARTMENT  
USE OF FORCE REVIEW BOARD REPORT

INC No. 018-20	CF No.	DR No.
COP Directed		


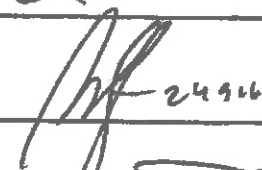

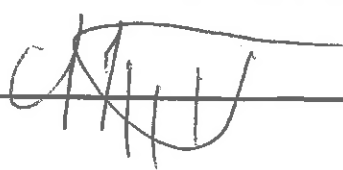
REVIEW BOARD INFORMATION

<b>Location of Incident</b> Stoddard Wells Off-Highway Vehicle Area-Apple Vall	<b>RD</b>	<b>Date of Incident</b> May 03, 2020	<b>Date and Time of Board Review</b> February 08, 2021 1230 Hours
<b>Chair</b> Assistant Chief D. Choi, Serial No. 32350	<b>Signature of Approving Board Members:</b> 		
<b>Member (Office Representative)</b> Assistant Chief B. Girmala, Serial No. 24916			
<b>Member (Police Sciences and Training Bureau)</b> Commander M. Reina, Serial No. 34490			
<b>Member (Bureau)</b> Deputy Chief A. Labrada, Serial No. 30398			
<b>Member (Peer)</b> Officer A. Estrada, Serial No. 30398			
<b>Presenting Commanding Officer</b> Captain A. Baez, Serial No. 28623			
<b>Notes:</b>			
<b>Additional Considerations:</b>			
<b>Modification to Present Policy, Practices or Training:</b>			
<div style="text-align: right;"> <input type="checkbox"/> COP Date Signed: _____  <input type="checkbox"/> PC Date Submitted: _____         </div>			

LOS ANGELES POLICE DEPARTMENT  
USE OF FORCE REVIEW BOARD REPORT

INC No. 018-20	CF No.	DR No.
COP Directed		

REVIEW BOARD INFORMATION

Location of Incident Stoddard Wells Off-Highway Vehicle Area-Apple Vall	RD	Date of Incident May 03, 2020	Date and Time of Board Review February 08, 2021 1230 Hours
Chair Assistant Chief D. Choi, Serial No. 32350	Signature of Approving Board Members: 		
Member (Office Representative) Assistant Chief B. Girmala, Serial No. 24916			
Member (Police Sciences and Training Bureau) Commander M. Reina, Serial No. 34490			
Member (Bureau) Deputy Chief A. Labrada, Serial No. 30398			
Member (Peer) Officer A. Estrada, Serial No. 30398			
Presenting Commanding Officer Captain A. Baez, Serial No. 26623			
Notes:			
Additional Considerations:			
Modification to Present Policy, Practices or Training:			
<div style="text-align: right;"> <input type="checkbox"/> COP Date Signed: _____  <input type="checkbox"/> PC Date Submitted: _____         </div>			

<b>Employee (Last Name, First, Middle)</b> Tamayo, Ismael		<b>Serial No.</b> 38258	<b>Rank/Class</b> Police Officer III	<b>Incident No.</b> 018-20
<b>Length of Employment</b> 13 years, 8 months	<b>Current Division</b> Newton		<b>Time in Current Division</b> 10 years, 3 months	

Use of Force Review Board	Chief of Police	Police Commission
<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Tactical Debrief <input checked="" type="checkbox"/> Administrative Disapproval	<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Tactical Debrief <input checked="" type="checkbox"/> Administrative Disapproval	<b><u>Tactics</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval
<b><u>Drawing and Exhibiting the Firearm</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input checked="" type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Drawing and Exhibiting the Firearm</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input checked="" type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Drawing and Exhibiting the Firearm</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input checked="" type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input checked="" type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Less-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Less-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Less-Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Non-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Non-Lethal Use of Force</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Non-Lethal Use of Force</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b><u>Unintentional Discharge</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)	<b><u>Unintentional Discharge</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)	<b><u>Unintentional Discharge</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)
<b><u>Other Issues</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Other Issues</u></b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)	<b><u>Other Issues</u></b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)

**Notes:**

<b><u>Final Adjudication for Out of Policy/ Administrative Disapproval Finding</u></b> <input type="checkbox"/> Extensive Retraining <input type="checkbox"/> Notice to Correct Deficiencies <input type="checkbox"/> Personnel Complaint  <input type="checkbox"/> Employee's Work History Reviewed	<b>Notes:</b>
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**\*A Tactical Debrief shall be conducted for all Categorical Use of Force Incidents.**